

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the
California Renewables Portfolio Standard
Program.

Rulemaking 04-04-026
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING SCHEDULE FOR SUBMISSION OF PROPOSALS
FOR RPS PARTICIPATION**

Background

In Decision (D.) 05-11-025, the Commission established the framework for the participation of energy service providers (ESPs), community choice aggregators (CCAs), small utilities, and multi-jurisdictional utilities in the Renewables Portfolio Standard (RPS) program. That decision also set forth various implementation tasks to be undertaken in this proceeding.

In accordance with an Administrative Law Judge's Ruling Setting Prehearing Conference and Requesting Prehearing Conference Statements (November 28, 2005), the parties filed prehearing conference (PHC) statements on December 12, 2005. At the PHC held December 14, 2005, the parties and the assigned administrative law judge (ALJ) discussed several approaches to the process of implementation. A rough schedule for submission of proposals for the manner in which ESPs, CCAs, small utilities, and multi-jurisdictional utilities should participate in the RPS program was developed at the PHC. Also sketched out at the PHC was a process for addressing reporting issues, contracting issues, and the use of renewable energy credits (RECs) for RPS compliance.

After the PHC, the Alliance for Retail Energy Markets (AReM) sent a letter to the ALJ, dated December 20, 2005, proposing that some topics be considered in a different order, and in a different time frame, from that discussed at the PHC. After the ALJ granted the request of Aglet Consumer Alliance (Aglet) to allow brief responsive letters, Aglet, the City and County of San Francisco (CCSF), and Southern California Edison (SCE) sent letters to the ALJ and the service list.

This ruling sets out the substance and timing for the initial tasks of RPS participation by ESPs, CCAs, small utilities, and multi-jurisdictional utilities.¹

Discussion

The PHC assessed the priority that parties attached to different elements of the tasks set by D.05-11-025:

- submission of detailed proposals for the manner in which ESPs, CCAs, small utilities, and multi-jurisdictional utilities should participate in the RPS program (Ordering Paragraph (OP) 3);
- exploration of using procurement entities or other third-party intermediaries to facilitate the procurement of renewable generation by ESPs, CCAs, small utilities, and multi-jurisdictional utilities (OP 5);
- exploration of unbundled and tradable RECs (OP 6);

¹ This scheduling ruling is being issued, rather than an Assigned Commissioner's scoping memo, because the Commission anticipates opening a new proceeding in early 2006 that will encompass the issues discussed at the PHC, as well as additional issues. Any new Order Instituting Rulemaking will include a preliminary scoping memo, on which parties will be able to comment prior to the issuance of the Assigned Commissioner's scoping memo.

- exploration of use of short-term contracting (less than ten years) to fulfill RPS requirements for ESPs, CCAs, small utilities, and multi-jurisdictional utilities (OP 7).

Short-term contracting was identified as a high-priority subject by ESPs and CCAs. A consensus emerged that unbundled RECs are a high priority, while tradable RECs should be taken up later, when more is known about the development of the Western Renewable Energy Generation Information System (WREGIS) for REC tracking. Procurement entities were considered by all parties to be a lower-priority topic.

Setting a schedule for addressing these tasks is, as parties noted at the PHC, complicated by the heterogeneity of the entities involved. The CCAs are more properly *potential* CCAs, which will be formally organized at some later time, pursuant to D.05-12-041. The multi-jurisdictional utilities are the subjects of recently-enacted Pub. Util. Code § 399.17.² The ESPs and small utilities are subject to current compliance obligations, but have structures and problems that are different from those of the large utilities (Pacific Gas and Electric Company, SCE, San Diego Gas & Electric Company). The large utilities likewise are subject to current compliance obligations, as well as their annual procurement processes.

There is also, as discussed at the PHC, some tension between the development of “detailed proposals” for RPS participation and the resolution of high-priority issues that may have an immediate impact on planning and compliance. Since ESPs, CCAs, small utilities, and multi-jurisdictional utilities “are to be treated identically to the large investor-owned utilities” for certain

² All future references to sections are to the Public Utilities Code, unless otherwise noted.

purposes (D.05-11-025, OP 1),³ the continued operation of the RPS program with respect to the large utilities will also affect the manner in which the ESPs, CCAs, small utilities, and multi-jurisdictional utilities participate. Concurrency of developing the detailed proposals by the ESPs, CCAs, small utilities, and multi-jurisdictional utilities and the ongoing aspects of the RPS program for large utilities appears to be inevitable.

These issues raised the question of how and when detailed proposals should be submitted. Both ESPs and CCAs suggested that the application to them of some matters already resolved for large utilities, such as “baseline” years and initial-year compliance obligations, was in need of quick resolution. Other issues were viewed to be of lesser immediate importance.⁴ It is the ALJ’s view, expressed at the PHC, that each of the RPS-obligated entities, among ESPs, CCAs, small utilities, and multi-jurisdictional utilities, should present its proposal in the manner it thinks is most likely to provide a clear and complete

³ These are:

- The requirement that 20% of retail sales come from renewable sources by 2010, as required by the Energy Action Plan.
- The requirement that they increase their renewable retail electricity sales by at 1% per year through 2010.
- The requirement to report their progress toward meeting RPS program requirements to the Commission.
- The ability to utilize the same flexible compliance mechanisms.
- The requirement that they be subject to the same penalties and penalty processes.

⁴ AReM’s post-PHC letter suggested that reporting issues be delayed. CCSF supported this suggestion; Aglet and SCE opposed it. Because experience with RPS implementation for the large utilities has shown that reporting and accounting are both important and complex, Energy Division’s planning for a reporting workshop will not be altered by this ruling.

picture of its interests. If an obligated entity considers an issue of low present priority, or does not yet have information or a plan for an issue, it may include a clearly identified “placeholder” that outlines the issue and its place in the entity’s proposal, but reserves a more detailed discussion until a specified later time (*e.g.*, in comments on the RECs white paper).⁵ In presenting their proposals, the ESPs, CCAs, small utilities, and multi-jurisdictional utilities should, to the extent possible, “compare and contrast” their proposal with the existing RPS requirements (if any) for the large utilities on the same topic. (For example, if a specific reporting requirement is proposed, it should be compared to the existing reporting requirement for the large utilities.)

Schedule

At the PHC, many parties expressed reluctance to undertake the effort and expense involved in evidentiary hearings until it was clear that such hearings were absolutely necessary. Parties urged that workshops, party comments, and other methods be used first, with hearings to be held only if those methods failed to bring either resolution or a sufficiently detailed record on which a Commission decision could be based. The topics of unbundled RECs and short-term contracting were agreed to be in this category. The Division of Strategic Planning is intending to produce a staff white paper on unbundled RECs, which parties agreed could be the starting point for comments and possible workshops on that issue. Several parties urged that contracting issues also be the subject of a workshop. Energy Division staff had previously indicated that a workshop on

⁵ In so doing, the obligated entity must also weigh the risk that the Commission may need to take action that affects the reserved issue, whether or not a complete presentation has been made.

RPS reporting and accounting issues would also be held, most probably in mid or late January.

Recognizing that the preference of some parties for workshops and comments may not yield consensus, despite the parties' efforts, the ALJ suggested that time also be reserved for evidentiary hearings. If it appeared that hearings would be needed, a new PHC would be held in preparation for the hearings.

The current schedule for addressing implementation issues for ESPs, CCAs, small utilities, and multi-jurisdictional utilities is as follows:

To be determined by Energy Division staff	Workshop on reporting issues
February 1, 2006	Proposals of ESPs, CCAs, small utilities, and multi-jurisdictional utilities filed and served
February 15, 2006	Responses to proposals filed and served
February 22, 2006	Replies to responses filed and served
To be determined by Energy Division staff	Workshop on contracting issues
March 2006	Staff white paper on unbundled RECs
April 24-May 5, 2006	Reserved for evidentiary hearings

IT IS RULED that:

1. The schedule for submission of proposals for the manner in which energy service providers (ESPs), community choice aggregators (CCAs), small utilities, and multi-jurisdictional utilities should participate in the Renewables Portfolio Standard (RPS) program is as set forth above.

2. The preliminary schedule for workshops and other activities related to implementation of the RPS participation of ESPs, CCAs, small utilities, and multi-jurisdictional utilities is as set forth above.

Dated January 3, 2006, at San Francisco, California.

/s/ ANNE E. SIMON

Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Schedule for Submission of Proposals for RPS Participation on all parties of record in this proceeding or their attorneys of record.

Dated January 3, 2006, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

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